

strongly opposing the winding-up of the Company as "it would cause irreparable damage". If the respondent were entitled to any remedy, the case might call for an offer to purchase his shares: such an offer (at 600% of their par value) has been made. This he is entitled to reject, but rejection does not strengthen his claim to put an end to the Company. Finally it was said that, as the Company's concession had only a short time to run before it expired, and as the Company had few other assets, this was not in reality a case of destroying a going enterprise. The Company had no prospect of continuing life and what was sought was merely independent control of an inevitable liquidation. But it does not follow, and should not be assumed, that the Company had no other profitable activities open to it, and it would be for the shareholders as a whole to decide whether the Company should continue, after the concession expired, or should be terminated.

In their Lordships' opinion, the respondent failed completely to make out a case for winding this Company up, and the cross-appeal must fail.

Their Lordships will advise His Majesty the Yang di-Pertuan Agong that the appeal be allowed and the judgment of the trial judge restored and that the cross-appeal be dismissed. The respondent must pay the costs before the Board and in the courts below.

*Appeal allowed;
Cross-appeal dismissed.*

Solicitors: Coward Chance; Stephenson Harwood.

A SINGAPORE REPORTS

SINGAPORE TRANSPORT SUPPLY SERVICE PTE. LTD. v. WEE PENG WHATT & ORS. PUBLIC CRANE CO. v. WEE PENG WHATT

[C.A. (Wee Chong Jin C.J., Kulasekaram and D'Cotta JJ.)
April 18, 1978]

B [Singapore — Civil Appeals Nos. 43 and 46 of 1977]

Labour Law — Employment — Negligence — Employer to use reasonable skill and care to provide a safe and proper system of work — Appeal — Dispute as to liability.

Torts — Negligence — General duty of care — Master-servant relationship — Common law duty to take reasonable care for safety of servant.

C These appeals arose out of a High Court decision (see [1978] 1 M.L.J. 192) which found the appellants, Singapore Transport Supply Service Pte. Ltd. (hereinafter called S.T.) and Public Crane Co. (hereinafter called P.C.) equally liable for the accident caused to the respondent, W. and awarded damages against them. Briefly, the facts as found by the court were as follows:— W. was employed by S.T. as a labourer to unload goods from their lorries on the quayside into the holds of tongkangs. S.T. hired the cranes from P.C. The crane belonged to one L., the third respondent. On the day of the accident, W. was in the tongkang carrying out his duties in the unloading when the crane driver in the course of lowering cartons of milk stacked on a pallet into the tongkang lowered it on the person of W. thus causing injuries to him. The court found that the accident was caused by the negligence of the crane driver and/or the crane attendant, both employees of P.C. S.T. was also found liable in failing in their duty to W. as his employers to take reasonable care for his safety as their servant as they did not provide and maintain a safe system of work. S.T. and P.C. appealed.

F Held, dismissing both appeals: (1) an employer was under a duty to take reasonable care for the safety of his workmen. Where the task was such as to call for the laying down of a system or mode of working in the interests of safety it was the employer's duty to use reasonable skill and care to provide a proper and safe system of work. The test was what was reasonable and proper to be done for the safety of the workman in the circumstances of the particular case;

(2) the crane attendant was bound to carry out his duties at the material date "according to the orders and under the absolute control of" P.C. The latter was therefore vicariously liable for the negligence of the crane attendant which resulted in the injuries sustained by W.

Cases referred to:—

- G (1) *Winter v. Cardiff R.D.C.* [1950] 1 All E.R. 819, 823.
(2) *Donovan v. Laing, Wharton, and Down Construction Syndicate, Ltd.* [1893] 1 Q.B. 629, 631.

COURT OF APPEAL.

Tan Tee Seng for the appellant (Singapore Transport Supply Service Pte. Ltd.).

H *Datuk David Marshall* for the appellant (Public Crane Co.).

H.E. Cashin for the respondent.

T.L. Lee for the third respondent.

I *Wee Chong Jin C.J.* (delivering the judgment of the Court): These two appeals arise out of a High Court action in Suit No. 932 of 1975 commenced by Wee Peng Whatt, the first respondent in Civil Appeal No. 43 of 1977 and the respondent in Civil Appeal No. 46 of 1977, against Singapore Transport Supply Service Pte. Ltd., the appellant in Civil Appeal No. 43 of 1977, Public Crane Company, the second respondent in Civil Appeal No. 43 of 1977 and the appellant in Civil Appeal No. 46 of 1977, and Lim Ah Soon.

the third respondent in Civil Appeal No. 43 of 1977. With the consent of all the parties, these two appeals were heard together and we propose to give one judgment covering these two appeals.

In this judgment we will refer to Wee Peng Whatt as the plaintiff, Singapore Transport Supply Service Pte. Ltd. as the first defendants, Public Crane Company as the second defendants and Lim Ah Soon as the third defendant.

On August 19, 1972 the plaintiff and four co-employees of the first defendants were engaged in unloading cartons of milk from lorries on to a tongkang. The unloading was carried out by means of a mobile crane No. SGC 3797 which was hired by the first defendants, who had a contract to unload these cartons on to a tongkang, from the second defendants. The mobile crane was owned by the third defendant. It had a crew of two, the driver and an attendant. The system used can best be described in the words of the plaintiff who said:—

"2 men on the lorry and 3 men in the tongkang. Cartons of milk would be loaded on the pallet, taken by the crane, swung over the tongkang and then lowered into the tongkang. 48 cartons per pallet. I was one of those in the tongkang. Standing at the bottom of the tongkang I could not see the crane driver. The crane attendant's job was to give signals and instruction to the crane driver. I could see the signalman. In the tongkang there was a taikong and his assistant. These two assisted us in the stacking of the goods in the tongkang. 4 of us were involved in taking hold of the pallet, bringing it to rest in the tongkang. Then we would take the strings and pull them and hook them back on the hook. At the signal from the signal man this would be lifted and the whole process would be repeated. Then off-loading from the pallet and thereafter stacking the cartons in the tongkang individually. The pallet is then pushed aside. We would wait for 5 or 6 pallets to accumulate when we would have them sent back to the lorry from which the goods were being unloaded."

During the course of the unloading, when the plaintiff was picking up a carton from a pallet resting in the hold of the tongkang, he was struck by another fully loaded pallet which was being lowered on to the tongkang. He sustained severe injuries for which the trial judge awarded him damages assessed at \$177,305.

In his grounds of judgment the trial judge said:

"On the admissions, documents and evidence, before me I made the following findings of fact:—

- (1) That the plaintiff at all material times was employed by the first defendants to unload goods from the first defendants, lorries into tongkangs at Boat Quay (not disputed);
- (2) That on the 19th August 1972 the plaintiff was in a tongkang in the course of his duties as aforesaid when the said Teng Ann Teng (PW4), the crane operator of a mobile crane No. SGC 3797, in the course of lowering cartons of milk laden on a pallet into the hold of the tongkang lowered the said pallet on to the plaintiff thereby causing him injuries as aforesaid (not disputed);
- (3) That on the day and time in question the said crane was operated by one Teng Ann Teng (PW4) (disputed only as to whose employee he was) and an attendant (admitted that he was employee of second defendants), whose name did not come out at the trial;
- (4) On the evidence of Teng Ann Teng (PW4) whom I regard as an entirely satisfactory witness and the evidence of Toh Guan Leng (2DW2), the Manager of the second defendants from 1970-1974, given under cross-examination by plaintiff's counsel, I find that on 19th August 1972, the date of the accident, the crane driver, Teng Ann Teng (PW4) was in the employ of the second defendants and worked under their direction;

A (5) That the mobile crane No. SGC 3797 on the date and time of the accident was under the care, custody, control and direction of the second defendants;

(6) That the crane used to lift the goods into the hold of the tongkang was hired by the first defendants from the second defendants who were independent contractors and that the second defendants provided the same with a driver (Teng Ann Teng) and an attendant;

B (7) That the accident was caused through the negligence of the crane driver and/or the signalman, both employees of the second defendants, in the course of their employment and not contributed to by the plaintiff in any way;

C (8) That both the first and second defendants knew that the system of unloading goods from the lorries into the hold of the tongkang was for the crane to lift from the lorry on the quayside the goods which had been stacked on pallets into the hold of the tongkang and for the plaintiff and other workers in the hold of the tongkang to stack the goods so lowered in the hold."

The trial judge went on to say:—

"In the view I took of the evidence that the third defendant did not hire out the said crane to the second defendants nor that the crane driver and the signalman thereof were his servants or agents I found no liability against the third defendant."

D The trial judge also found the first defendants and the second defendants were equally to blame and gave judgment for the plaintiff against them for the amount awarded and made an order that that amount and the costs of the plaintiff be borne equally between them.

E The trial judge's finding that the first defendants were liable for the plaintiff's injuries is based, partly, on the undisputed evidence that the plaintiff was on that day engaged in a repetitive and dangerous operation of unloading goods from quayside lorries on to the hold of a tongkang and that no instructions were given to the workers by the first defendants and, partly, on his finding that there was no adequate supervision on that day. The trial judge came to the conclusion that no system of work, having in mind the safety of their employees, was considered at all by the first defendants.

G It is contended on behalf of the first defendants in their appeal that the method employed on that day as described by the plaintiff to unload the cartons of milk from quayside lorries into a tongkang was not basically an unsafe system so long as the crane attendant, who acted as signalman, and the crane driver took due care and that there was no necessity for any supervision during the operation. It is to be observed that it is common ground that the second defendants were independent contractors and that the attendant and the crane driver were not under the control of the first defendants. Another observation to be borne in mind is that in an operation of this kind, as testified by the operations manager of the first defendants, the risk to the workers working in the hold of the tongkang is from a load falling on them when it is being lowered on to the tongkang by means of the crane.

I The law is well settled. An employer is under a duty to take reasonable care for the safety of his workmen. Where the task is such as to call for the laying down of a system or mode of working in the interests of safety it is the employer's duty to use reasonable skill and care to provide a proper and safe system of work. The test is that of what is reasonable

and proper to be done for the safety of the workman in the circumstances of the particular case. (See Lord MacDermott in *Winter v. Cardiff R.D.C.*⁽¹⁾). In our judgment, in the circumstances of the present case, we can see no ground for disagreeing with the trial judge's decision that the first defendants had failed in their duty towards the plaintiff.

We turn now to deal with the appeal of the second defendants. As we have said the mobile crane No. SGC. 3797 was owned by the third defendant. The crane was operated by a driver and an attendant who acted as signalman to the driver. On August 19, 1972 the crane, with its driver and attendant, was one of two mobile cranes hired by the first defendants, who had contracted to load goods on to a tongkang at Robinson Quay, from the second defendants, who owned mobile cranes for the purpose of letting them out on hire. The first defendants had on previous occasions hired mobile cranes from the second defendants.

The evidence of the plaintiff, which was not disputed at the trial, was that he was picking up a carton from a pallet resting in the hold of the tongkang when he was struck by another fully loaded pallet which was being lowered on to the tongkang. The evidence of the crane driver, whom the trial judge found to be an entirely satisfactory witness, was that he lowered the pallet which struck the plaintiff when the crane attendant gave him the signal to lower it. The attendant was not called to give evidence at the trial. On the evidence the trial judge found that the accident to the plaintiff was caused through the negligence of the crane driver and/or the signalman and not contributed to by the plaintiff in any way.

It is contended on behalf of the second defendants that there was no evidence to support the trial judge's finding that the crane driver was negligent and that the trial judge, having found the crane driver to be an entirely satisfactory witness, ought to have found on the crane driver's evidence that the crane driver was not guilty of any negligence in lowering the loaded pallet in response to the signal of the crane attendant. We accept this contention.

It is also contended on behalf of the second defendants that the trial judge erred in finding that the crane attendant was negligent as there was no evidence to support that finding. In our judgment, it must follow, on the trial judge's acceptance of the crane driver's evidence that he lowered the loaded pallet on a signal from his attendant, that the crane attendant was negligent in giving the signal to lower when the plaintiff was engaged in removing several cartons of milk on a pallet resting in the hold of the tongkang.

It is next contended that even though the crane driver and/or the attendant were negligent the second defendants were not vicariously liable for their negligence because the trial judge should have found on the evidence that they were servants of the third defendant, who owned the crane, and not servants of the second defendants. As we have come to the conclusion that the crane driver was not negligent the question of vicarious liability in respect of the crane driver does not arise in the present case. With regard

A to the crane attendant there is a clear admission by Toh Guan Leng, the then manager and partner of the second defendant firm, that the crane attendant was in the employ of the second defendants at the date of the accident. It is urged on behalf of the second defendants that the trial judge should have found on the evidence that Toh Guan Leng was the agent of the third defendant and in his capacity as such agent had employed the crane attendant so as to constitute the third defendant the master of the crane attendant at all material times. It is to be observed that Toh Guan Leng was a witness called on behalf of the second defendants and in answer to a question by the court and also during re-examination he unequivocally said that the crane attendant at the date of the accident was an employee of the second defendants.

B In our judgment the trial judge was entitled to rely on the admission of Toh Guan Leng that the crane attendant was at the material date the employee of the second defendants and not of the third defendant. In any event, we are of the opinion that on all the evidence before the trial judge the crane attendant was bound to carry out his duties at the material date, in the words of Lord Esher M.R. in *Donovan v. Laing, Wharton, and Down Construction Syndicate, Limited*,⁽²⁾ "according to the orders and under the absolute control of" the second defendants. It follows, in our opinion, that the second defendants must be vicariously liable for the negligence of the crane attendant which resulted in the injuries sustained by the plaintiff.

Accordingly, both appeals must be dismissed with costs.

Appeals dismissed.

Solicitors: *Allen & Gledhill; Murphy & Dunbar; David Marshall; T.L. Lee & Co.*

ASIA COMMODITY TRADERS PTE. LTD. v. FOOK HAI DEVELOPMENT PTE. LTD.

[O.C.J. (Chua J.) February 16, 1978]

[Singapore — Originating Summons No. 24 of 1977]

Contract — Rescission — Sale of office — Partitioning of office at purchasers' request — Misstatement of actual area — Whether purchaser allowed to rescind the contract.

H Pursuant to an agreement of October 7, 1974 the plaintiffs agreed to buy from the defendants an office for the price of \$350,020 on the basis of \$220 per sq. ft. The First Schedule annexed to the said agreement stated that the area of the office was 1,591 sq. ft. Clause 27 of the agreement referred to the area as "an estimate". The office purchased by the defendants was then known as Unit 505. In May, 1975, the plaintiffs requested a brick partition wall to be erected in the office. Thereafter the office became two units known as units 505/505A. By a letter dated November 11, 1976, the defendants informed the plaintiffs that the total area purchased by the latter was 1888 sq. ft. The price of the extra 297 sq. ft. at the rate of \$220 per sq. ft. would be \$65,340. Subsequently, several correspondence ensued between the parties in which the plaintiffs made it clear that they wished "to resile from the contract". The plaintiffs had paid the defendants \$315,018 leaving 10% of the purchase price still unpaid.

The issue before the court was whether the plaintiffs were entitled to rescind the agreement when they were told that